

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-3
SUBSTANTIVE REGULATIONS**

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560-7-3-.06 Taxation of Corporations. Amended.

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(1) **Taxable Income.** Georgia taxable income of a corporation before apportionment and allocation shall be computed pursuant to O.C.G.A. § 48-7-21.

(2) **Affiliated Corporation.** For purposes of the affiliated corporations dividend deduction provided in O.C.G.A. § 48-7-21, the term “affiliated corporation” means a corporation that is a member of the taxpayer’s “affiliated group” within the meaning of § 1504 of the Internal Revenue Code. This shall apply whether or not the affiliated group files a federal consolidated return.

(3) **Separate Return.** In the event a taxpayer files a separate return with Georgia but is included in a consolidated federal return, the taxpayer shall start with its separate company federal taxable income or loss. The separate company federal taxable income or loss shall be the taxable income or loss of the corporation included in the consolidated federal return but without the modifications listed in Internal Revenue Service Regulation § 1.1502-12.

(4) **Consolidated Return.** See Regulation 560-7-3-.13.

(5) Net Operating Losses.

(a) Net operating losses shall be treated as provided in paragraph (10) of subsection (b) of O.C.G.A. § 48-7-21.

(b) In the event a taxpayer is entitled to a refund of income taxes by reason of a net operating loss carryback under paragraph (10) of subsection (b) of O.C.G.A. § 48-7-21, the taxpayer may file an amended return within the time period prescribed by O.C.G.A. § 48-7-21 or alternatively may file an “application for a tentative carryback adjustment of the taxes” within a period of twelve (12) months following the end of the taxable year of the net operating loss. The application shall be in such form as the Commissioner shall prescribe. Such application shall not constitute a claim for credit or refund for purposes of O.C.G.A. § 48-2-35. Within a period of ninety (90) days from the last day of the month in which the application for a tentative carryback adjustment is filed, the Commissioner shall make, to the extent he or she deems practicable in such period, a limited examination of the application to determine the amount of tax decrease attributable to such carryback adjustment upon the basis of the application and examination. The Commissioner may disallow, without further action, any application which contains errors of computation which he or she deems cannot be corrected within such ninety (90) day period or which contains material omissions. The decrease so determined shall be applied against any unpaid amount of the tax and the remainder shall, within such ninety (90) day period, be either credited against any income tax then due from the taxpayer, or refunded to the taxpayer. Any such credit or refund made within such ninety (90) day period shall be without interest. If the Commissioner should determine that the amount credited or refunded under this paragraph is in excess of the amount properly attributable to the carryback adjustment, he or she may assess the amount of the excess as a deficiency as if it were due to a mathematical error appearing on the face of a return.

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(c) The provisions of § 108 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal Revenue Code § 108 provisions shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. The reduction in the Georgia net operating losses shall be determined by applying the Georgia apportionment percentage for the year of the discharge to the amount of the Internal Revenue Code § 108 net operating loss reduction determined pursuant to this regulation.

2. If the taxpayer files a consolidated federal income tax return, such provisions shall be applied on a separate entity basis. Thus, except as provided in this regulation, the Internal Revenue Service regulations relating to how to apply Internal Revenue Code § 108 to consolidated returns shall not apply. However, a determination under the federal consolidated return regulations that the separate entity has an amount of discharge of indebtedness income and or is required to reduce tax attributes shall also apply for Georgia purposes except that paragraph (a)(4) of Internal Revenue Service Regulation § 1.1502-28 shall not apply.

3. Any elections, with respect to the order of the tax attribute reductions, made for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations, shall also apply for Georgia purposes.

(d) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 381, as they relate to Georgia net operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. If the taxpayer files a consolidated federal income tax return, such provisions shall be applied on a separate entity basis. However, when one or more members is a distributee of assets in a

liquidation to which Internal Revenue Code § 332 applies and such member or members in the aggregate own stock of the liquidating corporation that satisfies the requirements of Internal Revenue Code § 1504(a)(2), such member or members shall succeed to the net operating loss in the same manner as provided in the Internal Revenue Service Regulations.

(e) The provisions of § 382 of the Internal Revenue Code of 1986, as amended, as they relate to Georgia net operating losses, shall be applied as follows:

1. Except as otherwise provided in this regulation, the Internal Revenue Code § 382 limitation shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. Such limitation shall be computed on a separate entity basis even when a consolidated federal income tax return is filed. Except as provided in this regulation, the Internal Revenue Service Regulations regarding how to apply Internal Revenue Code § 382 when a consolidated return is filed and paragraph (f) of Internal Revenue Service Regulation § 1.382-8 shall not apply for Georgia purposes.

2. A determination that an ownership change has occurred for federal income tax filing purposes and pursuant to Internal Revenue Service Regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns) shall apply for Georgia purposes.

3. Adjustments to prevent duplication of value contained in the Internal Revenue Code § 382 regulations (including those regulations relating to how to apply Internal Revenue Code § 382 to consolidated returns if a consolidated federal return is filed) apply for Georgia purposes. However, the election to restore value provided in paragraph (c) of Internal Revenue Service Regulation § 1.382-8 shall not be available.

4. Whenever an ownership change occurs, an Internal Revenue Code § 382 limitation will apply to all Georgia pre-change losses that are carried over to a post-change year. “Pre-change years” end on or before the date of an ownership change, while “post-change years” end after the date of an ownership change. In a post-change year, the limitation on the use of any pre-change year Georgia net operating losses shall be determined by applying that post-change year’s apportionment percentage to the Internal Revenue Code § 382 limitation for that post-change year determined pursuant to this regulation.

5. The Internal Revenue Code § 382 limitation does not reduce the total amount of pre-change Georgia net operating losses available for carry forward but, similar to federal treatment, restricts the amount of net operating losses from pre-change years that can be applied to the income in a post-change year.

6. If there is any unused Internal Revenue Code § 382 limitation for Georgia purposes in a post-change year, the following year’s limitation shall be increased by the excess amounts determined for Georgia tax purposes in a manner similar to Internal Revenue Code § 382(b)(2).

(f) Except as otherwise provided in this regulation, the provisions of Internal Revenue Code § 384, as they relate to Georgia net operating losses, shall be applied in the same manner as provided in the Internal Revenue Code and related regulations. When a consolidated federal return is filed, the adjustment for such Internal Revenue Code Section shall be determined on a separate entity basis. The limitation on offsetting losses against any recognized built in gains which are allocated to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation) attributable to such gains. The limitation on offsetting losses against any recognized gains which are apportioned to Georgia shall be equal to the Internal Revenue Code § 384 limitation (determined pursuant to this regulation)

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attributable to such gains multiplied by the apportionment percentage for the recognition period taxable year.

(g) Consolidated net operating losses, including the application of §§ 108, 381, 382, and 384 of the Internal Revenue Code of 1986, shall be treated as provided in Regulation 560-7-3-.13.

(6) "S" Elections.

(a) The Federal treatment of a Qualified Subchapter S Subsidiary (QSSS) applies for income tax purposes but not net worth tax purposes.

(b) In the case of an S corporation where the Subchapter "S" election is not recognized as provided by O.C.G.A. §§ 48-7-21 and 48-7-27 the following shall apply:

1. Losses incurred in a year the corporation is treated as an S corporation shall not be carried to a year the corporation is treated as a C corporation.

2. Net operating losses incurred in a year the corporation is treated as a C corporation shall not be carried to a year the corporation is treated as an S Corporation. For example, in 2002 the corporation is treated as a C corporation and has a net operating loss. The corporation elects to forego the carryback period and carries the net operating loss forward. In 2003 the corporation is treated as an S corporation. The net operating loss from 2002 may not be claimed in 2003. In 2004 the corporation is treated as a C Corporation. The net operating loss from 2002 may be claimed in 2004. However, the year the corporation is treated as an S Corporation is included as a taxable year for the purpose of determining the number of taxable years that a net operating loss may be carried forward or back.

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3. In a year the corporation is treated as a C corporation, the federal taxable income for purposes of O.C.G.A. § 48-7-21 shall be the federal taxable income of the S corporation including the separately stated items of income or loss (such as contributions and depletion).

4. The federal treatment of a Qualified Subchapter S Subsidiary (QSSS) applies even in a year the parent corporation is treated as a C corporation for Georgia purposes.

Authority O.C.G.A. §§ 48-2-12 and 48-7-21.